

REMARKS

This Preliminary Amendment accompanies an RCE filed in response to the Office Action of January 25, 2007.

At the outset, the following claims have been copied from the following reexamined patents for the purpose of provoking an interference:

Claims 40-42 Claims 12, 13 and 14 of U.S. Patent No. 6,290,391, as reexamined in reexamination serial no. 90/007,203 (reexamination certificate issued March 13, 2007).

Claims 48-50 Claims 13, 14 and 15 of U.S. Patent No. 6,347,885, as reexamined in reexamination serial no. 90/007,204 (reexamination certificate issued April 10, 2007). 37

C.F.R. §41.202(a)(1)

It is respectfully submitted that no prior art rejections can be asserted against the present claims which are inconsistent with the reexaminations of U.S. Patent Nos. 6,290,391 and 6,347,885, and that the prior art rejections of the Office Action of January 25, 2007 are overcome.

Claims 12, 13 and 14 of U.S. Patent No. 6,290,391, as reexamined, interfere with Claims 40-42 of the present application. The first Count should be Claim 12 of U.S. Patent No. 6,290,391, as reexamined. Claim 40 of the present application corresponds to this proposed first Count as it is a copy thereof. Claims 41 and 42 depend from this Claim 40 and therefore likewise correspond to the first Count.

Claims 13, 14 and 15 of U.S. Patent No. 6,347,885, as reexamined, interfere with Claims 48-50 of the present application. The second count should be Claim 13 of U.S. Patent No. 6,347,885, as reexamined. Claim 48 of the present application corresponds to this proposed second Count as it is a copy thereof. Claims 49 and 50 depend from this Claim 48 and therefore

likewise correspond to the second Count. **37 C.F.R. §41.202(a)(2)**

It is respectfully submitted that as (1) Claim 40 of the present application, Claim 12 of U.S. Patent No. 6,290,391 (as reexamined) and the first proposed count are identical to each other and (2) Claim 48 of the present application, Claim 13 of U.S. Patent No. 6,347,885 (as reexamined) and the second proposed count are identical to each other, that the requirements of **37 C.F.R. §41.202(a)(3)** are met.

The present application has an effective U.S. filing date as least as early as April 15, 1999 and foreign priority at least as early as April 20, 1998 whereas U.S. Patent No. 6,290,391 and U.S. Patent No. 6,347,885 have a priority date no earlier than January 18, 2000. It is respectfully submitted that this meets the requirements of **37 C.F.R. §41.202(a)(4)**.

The claim is supported by the present specification, including drawings, as follows:

New Claim	Support in specification and drawings
40. A method of using a flexible package,	A method of using the bag 30 illustrated in Figure 25 and described from page 16, last line to page 17, line 7.
the flexible package comprising a package body defining an interior;	The bag 30 illustrated in Figure 25.
a zipper closure comprising a first mating profile and a second mating profile, each extending along an edge of the package body, and the zipper closure providing access to the interior;	Profiles 10 and 12 of Figure 25 form a zipper closure which is formed along the upper edge of package 30.
a slider device operably mounted on the zipper closure, the slider device interlocking the first mating profile with the second mating profile when the slider device is moved in a first direction and disengaging the first mating profile from the second mating profile when the slider device is moved in a second, opposite direction, and	Slider 9 of Figure 25.
and a tamper-evident structure covering and encasing at least a major portion of the zipper closure but not encasing the slider, the	Film extension 126 of Figure 25.

abutment preventing said slider from movement in a direction disengaging said zipper profiles;	
the method comprising: (a) freeing the slider device to move along the closure by removing the tamper-evident structure from the flexible package and thereby removing the abutment and unencasing the portion of the zipper closure encased by the tamper-evident structure; and	See page 17, lines 5-7.
(b) moving the slider device in the second direction to disengage the first and second mating profiles, thereby providing access to the package interior.	See page 17, lines 5-7.
41. The method according to claim 40,	See Claim 40 above.
wherein the step of removing the tamper-evident structure from the flexible package comprises: (a) removing the tamper-evident structure at an area of weakness.	The perforations 124 described on page 17, lines 5-7, and shown on Figure 25 form an "area of weakness".
42. The method according to claim 41,	See Claim 41 above.
wherein the step of removing the tamper-evident structure at an area of weakness comprises: (a) removing the tamper-evident structure at a perforation line.	The perforations 124 described on page 17, lines 5-7, and shown on Figure 25 form a "perforation line".
48. A method of using a flexible package,	The method of using bag 30 illustrated in Figure 25 and described from page 16, last line to page 17, line 7.
the flexible package comprising a package body defining an interior;	The bag 30 illustrated in Figure 25 has a package body defining an interior.
a zipper closure extending along a first edge of the package body, the zipper closure comprising first and second mating profiles and providing access to the interior;	Profiles 10, 12 of Figure 25.
a slider device mounted on the zipper closure, the slider device interlocking the first mating profile with the second mating profile when the slider device is moved in a first direction and disengaging the first mating profile from the second mating profile when the slider device is moved in a second opposite direction; and	Slider 9 of Figure 25.
a tamper-evident structure encasing at least a major portion of the zipper closure, but not encasing the slider,	The film extension 126 of Figure 25 forms a tamper-evident structure on the top edge of bag 30 which encases at least a major portion of the zipper closure formed by profiles 10, 12.
the slider residing in and captured by an	Left-most side-cut 122 of Figure 25 forms an

opening in the tamper-evident structure thereby limiting the position of the slider along the zipper closure to the area defined by said opening;	opening in which the slider resides and is captured. This opening further limits the position of the slider to the area defined by this opening. It is noted that col. 3, lines 60-63 of U.S. Patent No. 6,347,885 (from which this claim was copied) states that “entirely defined” means “totally surrounded”. Therefore, it follows that “defined” (as distinct from “entirely defined”) encompasses “partially surrounded” (as distinct from “totally surrounded”). Further, this position is supported by the language of this claim regarding first and second panel sections <i>defining</i> an “interior” in that the interior is not “totally surrounded” by the panels when a mouth is formed in the package.
wherein the method comprises: (a) freeing the slider device to move along the closure by removing the tamper-evident structure from the flexible package and thereby unencasing the portion of the zipper closure encased by the tamper-evident structure; and	Page 17, lines 5-7.
(b) moving the slider device along the closure in a second direction to disengage the first and second mating profiles, thereby providing access to the package interior.	Page 17, lines 5-7.
49. The method according to claim 48,	See claim 48.
wherein the step of removing the tamper-evident structure from the flexible package comprises: (a) removing the tamper-evident structure at an area of weakness.	The perforations 124 described on page 17, lines 5-7, and shown on Figure 25 form an “area of weakness”.
50. The method according to claim 49,	See claim 49.
wherein the step of removing the tamper-evident structure at an area of weakness comprises: (a) removing the tamper-evident structure at a perforation line.	The perforations 124 described on page 17, lines 5-7, and shown on Figure 25 form a “perforation line”.

It is respectfully submitted that this chart meets the requirements of 37 C.F.R. §41.202(a)(5). This chart likewise establishes constructive reduction to practice under 37 C.F.R. §41.202(a)(6). However, the Applicant reserves the right to establish an earlier actual or constructive reduction to practice.

The Applicant respectfully requests the declaration of an interference between the presently pending claims in the instant application and U.S. Patent No. 6,347,885, as reexamined, and U.S. Patent No. 6,290,391, as reexamined.

The Commissioner is authorized to charge any necessary fees to Deposit Account No. 50-1145, Order No. 500769.100649.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald E. Brown", with a stylized flourish at the end.

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